

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JAYE UNDERWOOD II,

Defendant-Appellant.

UNPUBLISHED

June 12, 2007

No. 268034

Berrien Circuit Court

LC No. 05-412135-FH

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-offense possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv) and MCL 333.7413(2), and second-offense possession of marijuana, MCL 333.7403(2)(d) and MCL 333.7413(2). The trial court sentenced defendant to 42 to 480 months' imprisonment for his possession with intent to deliver less than 50 grams of cocaine conviction, and to a concurrent term of 16 to 24 months' imprisonment for his possession of marijuana conviction. We affirm.

Defendant contends that the minimum sentence of 42 months' imprisonment for his possession with intent to deliver cocaine conviction constitutes an unlawful upward departure from the sentencing guidelines. We disagree, finding that defendant's minimum sentence was not a departure from the properly enhanced guidelines.

Generally, we review de novo issues concerning the proper interpretation and application of the legislative sentencing guidelines. *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004). "This Court shall affirm sentences within the guidelines range absent an error in scoring the sentencing guidelines or inaccurate information relied on in determining the defendant's sentence." *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000); MCL 769.34(10).

MCL 333.7413(2) provides that "an individual convicted of a second or subsequent controlled substances offense . . . may be imprisoned for a term not more than twice the term otherwise authorized" In *People v Williams*, 268 Mich App 416, 429-430; 707 NW2d 624 (2005), this Court held that MCL 333.7413(2) permits the sentencing court to double not only the statutory maximum sentence, but also the upper limit of the recommended minimum sentence range. In this case, it is undisputed that the original sentencing guidelines range was 5 to 23 months' imprisonment. It is also undisputed that defendant had a prior conviction for a

controlled substance offense. Thus, the trial court permissibly increased the recommended minimum sentence range under the legislative guidelines from 5 to 23 months to 10 to 46 months. *Id.* Defendant's 42-month minimum sentence falls within those guidelines, and we must affirm. *Leversee, supra.*

In reaching our conclusion, we note that defendant argues on appeal that *Williams, supra*, was wrongly decided. However, defendant did not raise this issue below. In fact, at the sentencing hearing, defense counsel conceded that "the *Williams* case allows [the trial court] to double the 5 to 23 to 10 to 46." Thus, this issue is waived. "Generally, arguments not raised and preserved for review are waived." *People v Stanaway*, 446 Mich 643, 694; 521 NW2d 557 (1994). Moreover, a defendant may not assign error on appeal to something his own counsel deemed appropriate at trial. *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998). "To do so would allow defendant to harbor error as an appellate parachute." *Id.* Nevertheless, defendant has failed to persuade us that *Williams* was wrongly decided or that we should express disagreement with it. The underlying analysis of the case is fundamentally sound and we find no basis to disagree with the holding of the case. Moreover, we are bound to follow *Williams* under MCR 7.215(J)(1).

Further, we reject defendant's argument that he is entitled to resentencing because there were no substantial and compelling reasons to justify an upward departure from the sentencing guidelines. Under the statutory sentencing guidelines, "the trial court is required to choose a sentence within the guidelines range, unless there is a 'substantial and compelling' reason for departing from this range." *People v Babcock*, 469 Mich 247, 255-256; 666 NW2d 231 (2003). In this case, however, it is immaterial whether the trial court had substantial and compelling reasons to depart from the sentencing guidelines. Defendant's minimum sentence of 42 months' imprisonment was within the sentencing guidelines range "*as increased by MCL 333.7413(2).*" *Williams, supra* at 430 (emphasis in original). Thus, the trial court was not required to articulate a substantial and compelling reason for departing from the sentencing guidelines range because there was no departure. *Id.*

Affirmed.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio